

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Burlington Northern and Santa Fe Railway Company and :
City of Savanna, Carroll County, Illinois, :
Petitioners, :

V. :

Illinois Department of Transportation, :
Respondent. :

T03-0034

Petition for an order from the Illinois Commerce Commission :
authorizing the permanent closing and barricading to all vehicular traffic :
at the grade separation structure located at the intersection of Iris :
Street and the trackage of The Burlington Northern and Santa Fe :
Railway Company located at Milepost 143.39, DOT No. 069902Y in the :
City of Savanna, Carroll County, Illinois. :

ORDER

By the Commission:

On April 18, 2003, the Burlington Northern and Santa Fe Railway Company ("the Railway") and the City of Savanna, Carroll County, Illinois ("the City") filed with the Illinois Commerce Commission, a verified joint petition in the above-captioned matter naming as Respondent the State of Illinois, Department of Transportation ("IDOT").

Pursuant to notice, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Chicago office on June 5, 2003. Publication, giving notice of the proposed crossing closure and the date and place of the hearing, was made in a newspaper of general circulation in Carroll County. The publication was sponsored by Henry Humphries, Railroad Section, Transportation Division of the Commission and entered into evidence. The Railroad and the City were represented by counsel. Testimony and evidence in support of the petition was provided by Cheryl Townlian, Manager of Public Projects for the Railway.

The Railway, in its petition and in its direct case, proposes that safety will be improved by closure of the grade separation structure. The Railway maintains two mainline tracks at the crossing generally running in an east/west direction through the City. Train traffic consists of approximately thirty-five (35) trains traveling through in daylight and at night. The bridge is in deteriorating condition and was closed to vehicular traffic last winter for fear that safety would be compromised. Children from a nearby residential area travel to and fro by foot on the bridge, which is an acceptable use. There was no emergency vehicle traffic or school bus traffic on the bridge.

The Railway and the City are of the opinion that the public's safety would benefit from the closure of the grade separation structure to vehicular traffic. The structure does not meet today's construction standards. Replacement is not feasible due to the steep north approach. Improvement of the north approach to meet current standards would require the removal of residences.

Closure and barricading of the structure will be at the expense of the Railway but will actually be done by the City. Future maintenance of the structure will continue to be shared equally by the Railway and the City with the Railway performing the actual maintenance work.

The Commission, having considered the evidence of record, is of the opinion and finds that:

- (1) the Burlington Northern and Santa Fe Railway Company is a Delaware corporation with a principal place of business in Fort Worth, Texas, engaged in the transportation of persons and/or property by rail in the State of Illinois and as such, is a rail carrier as defined by the Illinois Commercial Transportation Law ("Law");
- (2) the City of Savanna, Carroll County, Illinois, is a political subdivision organized and existing under and by virtue of the laws of the State of Illinois;
- (3) the recitals of fact set forth in the prefatory portion of this order are supported by evidence of record and are hereby adopted as findings of fact;
- (4) public convenience and necessity do not require the retention of the grade separation structure at Milepost 143.39, DOT Number 069902Y, at the intersection of Iris Street, in the City of Savanna, Carroll County, Illinois, and public safety requires that said structure be closed and barricaded to all vehicular traffic;
- (5) it is fair and reasonable that the entire cost of closing, barricading, and providing signage at the said structure should be borne by the Railroad;
- (6) it is fair and reasonable that the Railway and the City continue to share the cost of future maintenance of the structure with the actual performance of the work by the Railway;
- (7) the closure of the subject structure should be completed within six months of the date of this Order;
- (8) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 require each "person" as defined by 5/18c-1104 to comply with every regulation or order of the

Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that The Burlington Northern and Santa Fe Railway Company be, and it is hereby required and directed to close and barricade to all vehicular traffic the grade separation structure at Iris Street, milepost 143.39, DOT Number 069929Y in the City of Savanna, Carroll County, Illinois.

IT IS FURTHER ORDERED that the cost for the closure of the subject structure shall be borne solely by the Railway;

IT IS FURTHER ORDERED that the closure of the subject structure to vehicular traffic shall be completed within six months of the date of this Order.

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required of it, 6180.71 – U.S. DOT Crossing Inventory Form as a notice of said completion.

IT IS FURTHER ORDERED that in accordance with Chapter 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 9th day of July 2003.

Edward C. Husley ²

Chairman

JUDGE <i>STBT</i>
SECTION CHIEF
<i>[Signature]</i> ORDERS SUPERVISOR